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FOR OUTER SPACE DELEGATION

E.O. 11652: GDS

TAGS: TSPA, PFOR, US

SUBJ OUTER SPACE: REMOTE SENSING POSITION PAPER

FOLLOWING IS CLEARED US POSITION FOR LEGAL SUBCOMMITTEE
OF OUTER SPACE COMMITTEE SESSION MAY 6-MAY 31, 1974 ON
AGENDA ITEM REMOTE SENSING OF EARTH RESOURCES:

BACKGROUND:

THE LEGAL SUBCOMMITTEE OF THE U.N. OUTER SPACE COMMITTEE
HAS HAD THE QUESTION OF THE LEGAL IMPLICATIONS OF REMOTE
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SENSING OF THE EARTH BY SATELLITES ON ITS AGENDA FOR

SEVERAL YEARS. EXCEPT FOR SCATTERED POLICY STATEMENTS BY INDIVIDUAL DELEGATIONS, HOWEVER, THE TOPIC HAS BEEN INACTIVE IN THE SUBCOMMITTEE BECAUSE OTHER AGENDA ITEMS HAVE HAD HIGHER PRIORITY. AT THE SUBCOMMITTEE'S 1974 SESSION REMOTE SENSING WILL AGAIN BE BELOW THREE OUT OF FOUR OTHER TOPICS ON THE SCALE OF PRIORITIES. HOWEVER, PURSUANT TO A REQUEST BY THE PRRS#COMMITTEE, "PART OF THE SESSION" WILL BE DEVOTED TO RESPONDING TO THE REQUEST BY THE WORKING GROUP ON REMOTE SENSING FOR THE SUBCOMMITTEE'S VIEWS ON "LEGAL IMPLICATIONS OF EARTH RESOURCES SURVEY BY REMOTE SENSING SATELLITES." (U.N. DOC. A/9020, PARA 29).

THE INTERDISCIPLINARY WORKING GROUP IN ITS SUBSTANTIVE SESSIONS IN 1973 AND EARLIER THIS YEAR DID NOT REACH ANY CONCLUSIONS ON LEGAL ASPECTS OF REMOTE SENSING. ON THE WHOLE THE U.S. WAS SUCCESSFUL IN THE WORKING GROUP IN PROMULGATING THE VIEW THAT INTERNATIONAL POLITICAL-LEGAL ISSUES RELATED TO REMOTE SENSING SHOULD NOT BE CONSIDERED ABSTRACTLY BUT RATHER WITH TECHNICAL AND ORGANIZATIONAL FACTORS CLEARLY IN MIND.

NEVERTHELESS, MANY MEMBERS OF THE WORKING GROUP WANTED TO MOVE TOWARD NEGOTIATION OF SOMEFORM OF INTERNATIONAL GUIDING PRINCIPLES ON REMOTE SENSING; THE USSR AND FRANCE HAVE TABLED SUCH PRINCIPLES IN DRAFT. A MORE EXTREME POSITION WAS TAKEN IN THE WORKING GROUP'S 1974 SESSION BY BRAZIL, WHICH CIRCULATED A HIGHLY RESTRICTIVE DRAFT TREATY, INDICATING IT WOULD SEEK TO HAVE THIS TEXT TAKEN UP AT THE LEGAL SUBCOMMITTEE.

THE BRAZILIAN TEXT IS PARTICULARLY OBJECTIONABLE IN THAT IT CHALLENGES THE RIGHT TO ACQUIRE REMOTE SENSING DATA BY SATELLITES, WITHOUT PRIOR CONSENT, THUS RAISING THE BASIC ISSUE OF THE RIGHT OF OVERFLIGHT BY SATELLITES IN ORBIT OF NATIONAL TERRITORY, AND THE RIGHT TO OBSERVE FROM OUTER SPACE, RIGHTS WE MAINTAIN ARE UNLIMITED PROVIDED THEY ARE EXERCISED PEACEFULLY IN ACCORDANCE WITH THE OUTER SPACE TREATY. THE BRAZILIAN TEXT IS UNACCEPTABLE TO THE USSR FOR THE SAME REASONS. THE SOVIETS HAVE

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INFORMALLY APPROACHED U.S. OFFICIALS URGING SUPPORT FOR THEIR DRAFT PRINCIPLES AS A MEANS OF HEADING OFF MORE RESTRICTIVE APPROACHES SUCH AS BRAZIL'S.

THE SOVIET AND FRENCH DRAFT PRINCIPLES BOTH CONFINE THEMSELVES TO THE DATA DISSEMINATION, AS OPPOSED TO THE ACQUISITION PHASE OF REMOTE SENSING. EACH, HOWEVER, CONTAINS UNACCEPTABLE RESTRICTIONS ON DISSEMINATION. AS

THE U.S. REPRESENTATIVE STATED AT THE 1974 WORKING GROUP SESSION, THE U.S. IN ITS EXPERIMENTAL PROGRAM IS PURSUING AN OPEN DATA DISSEMINATION POLICY AND INTENDS TO CONTINUE TO DO SO. IF A CONSENSUS EMERGES IN THE INTERNATIONAL COMMUNITY FAVORING SOME FORM OF CONTROLS OVER DISSEMINATION, WE WOULD PROBABLY NOT INSIST ON THIRD PARTY DISSEMINATION. HOWEVER, GIVEN OUR INTENTION TO MAINTAIN AN OPEN ACCESS SYSTEM WITHIN THIS COUNTRY, ANY RESTRICTIONS WE TRIED TO IMPOSE ON FOREIGN DISTRIBUTION OF OUR DATA WOULD BE DIFFICULT IF NOT IMPOSSIBLE TO ADMINISTER EFFECTIVELY, AND THE INTERESTS OF OTHER COUNTRIES RATHER THAN THOSE OF THE U.S. WOULD BE POORLY SERVED IN THAT THEY WOULD BE DEPRIVED OF RAPID, NON-DISCRIMINATORY ACCESS TO DATA.

PROBLEM:

IT IS QUITE UNCERTAIN HOW MUCH TIME THE SUBCOMMITTEE WILL ACTUALLY SPEND ON REMOTE SENSING AT THE 1974 SESSION. WE WISH ABOVE ALL TO FORESTALL ANY EFFORT TO NEGOTIATE ON A TREATY TEXT. SECONDARILY, WE SHOULD TRY TO AVOID ACTUAL NEGOTIATION OF DRAFT PRINCIPLES, SOVIET, FRENCH OR OTHER. ON THE OTHER HAND, IT WOULD BE HARD TO OBJECT TO EFFORTS TO PRESENT VIEWS BY OTHER MEMBERS OR TO UNDERTAKE INITIAL EVALUATION OF VIEWS ON LEGAL IMPLICATIONS, INASMUCH AS THESE HAVE BEEN SPECIFICALLY REQUESTED BY THE WORKING GROUP AND THE OUTER SPACE COMMITTEE.

POSITION:

(1) THE DELEGATION SHOULD TRY TO ACHIEVE PROCEDURAL ARRANGEMENTS WHICH WILL RESULT IN MINIMUM TIME BEING AVAILABLE FOR REMOTE SENSING AT THE SUBCOMMITTEE'S CONFIDENTIAL

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SESSION.

(2) THE DELEGATION SHOULD TAKE THE FIRM POSITION THAT THE TIME IS NOT RIPE FOR DISCUSSION, LET ALONE NEGOTIATION OF PRECISE TEXTS FOR EITHER PRINCIPLES OR A TREATY AT THE CURRENT SESSION. MUCH MORE DISCUSSION OF SUBSTANTIVE VIEWS, AND OF THE WHOLE RANGE OF TECHNICAL AND ORGANIZATIONAL AS WELL AS POLITICAL AND LEGAL CONSIDERATIONS THAT WOULD BE AFFECTED, IS NECESSARY BEFORE ANY EFFORT TO ESTABLISH ADDITIONAL INTERNATIONAL RULES GOVERNING THIS STILL DEVELOPING TECHNOLOGY.

HOWEVER, IF THERE APPEARS TO BE A SERIOUS HAZARD THAT IF PRINCIPLES ARE NOT DISCUSSED THE SUBCOMMITTEE WILL TAKE UP TREATY RULES, THE DELEGATION MAY AGREE TO DISCUSS THE

IMPLICATIONS OF POSSIBLE TYPES OF PRINCIPLES. IN SUCH DISCUSSION, THE POSITION TAKEN BY THE U.S. REPRESENTATIVE AT THE WORKING GROUP SHOULD BE MAINTAINED: WE INTEND TO CONTINUE AN OPEN DISSEMINATION POLICY IN THE U.S. EXPERIMENTAL PROGRAM. IF THE REST OF THE INTERNATIONAL COMMUNITY EVENTUALLY ADOPTS A GENUINE CONSENSUS THAT THEY DO NOT WISH TO PARTICIPATE IN SUCH A PROGRAM, WE OF COURSE WILL TAKE THAT INTO ACCOUNT IN ANY RECONSIDERATION OF OUR DISSEMINATION PRACTICES. THE DELEGATION SHOULD URGE OTHERS TO CONTINUE TO TAKE INTO ACCOUNT THE PRACTICAL CONSEQUENCES OF ADOPTING ANY RESTRICTIVE APPROACH TO THE DISSEMINATION OF REMOTE SENSING DATA, PARTICULARLY, THE EFFECT ON MUTUALLY BENEFICIAL REGIONAL ARRANGEMENTS OF RESTRAINTS AGAINST DISSEMINATION TO THIRD COUNTRIES. THE U.S. PRESENTATION OF FEBRUARY 25, 1974 TO THE

WORKING GROUP (PRESS RELEASE USUN-11(74)) SHOULD BE DRAWN ON IN THESE CONTEXTS.

(3) WITH REGARD TO A POSSIBLE EFFORT TO PRODUCE AN AGREED SET OF SUBCOMMITTEE VIEWS ON LEGAL IMPLICATIONS OF REMOTE SENSING, IF THE FOLLOWING ISSUES ARE RAISED, THE DELEGATION SHOULD MAINTAIN THE FOLLOWING POSITIONS: (A) RIGHTS OF ACQUISITION OF DATA FROM SPACE PLATFORMS ARE NOT IN QUESTION; (B) THE RIGHT OF A STATE TO CONTROL THE EXTRACTION OF NATURAL RESOURCES WITHIN ITS TERRITORY DOES NOT

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INCLUDE THE RIGHT TO CONTROL ALL INFORMATION ABOUT THOSE RESOURCES; (C) REMOTE SENSING IS CLEARLY WITHIN THE SCOPE OF PERMISSIBLE ACTIVITIES UNDER THE OUTER SPACE TREATY; (D) LEGAL ASPECTS OF REMOTE SENSING SHOULD NOT BE CONSIDERED IN THE ABSTRACT, BUT RATHER AS INTERRELATED WITH RELEVANT TECHNICAL, ECONOMIC AND ORGANIZATIONAL FACTORS, AND THE SUBCOMMITTEE'S COMMENTS SHOULD REFLECT THIS INTERRELATIONSHIP; (C) IN THIS CONNECTION, BEFORE RECOMMENDING LEGAL NORMS OR PRINCIPLES FOR ENDORSEMENT BY THE OUTER SPACE COMMITTEE AND ADOPTION BY THE GENERAL ASSEMBLY, THE SUBCOMMITTEE SHOULD HAVE IN MIND CONCRETE MODELS OF INTERNATIONAL MECHANISMS FOR DEALING WITH REMOTE SENSING DATA.

(4) IT MIGHT THEREFORE SEEM ADVISABLE TO DEFER ACTION ON SPECIFIC PRINCIPLES AT LEAST UNTIL THE STUDIES ON SUCH MODELS RECOMMENDED BY THE SCIENTIFIC AND TECHNICAL SUBCOMMITTEE BECOME AVAILABLE. SUCH DEFERRAL WOULD NOT PRECLUDE THE LEGAL SUBCOMMITTEE FROM CONSIDERING THE LEGAL IMPLICATIONS OF PROPOSALS PUT BEFORE IT IN THE MEANTIME, BUT THE LEGAL SUBCOMMITTEE SHOULD NOT MAKE CONCLUSIONS OR RECOMMENDATIONS IN THIS AREA UNTIL THOSE STUDIES ARE

AVAILABLE. RUSH

NOTE BY OC/T: #AS RECEIVED.

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